

**REMARKS**

Claims 1-24 are pending in the application and are subject to an election requirement. The Office Action indicates claim 1 is currently regarded as generic to the following patentably distinct species:

Group 1; figures 9-11  
Group 2; figures 12-13  
Group 3; figures 14  
Group 4; figures 15-20

Applicants elect the species of Group 1. Inasmuch as no one within or outside the US PTO seems to be able to explain exactly what it means for a claim to "read" on a species, Applicants can only indicate that they believe claims 1-4 read on the elected species.

The undersigned attorney has had several frustrating experiences with election requirements. As a result, to preserve rights of the Applicant, he routinely traverses election requirements on grounds that are not familiar to most Examiners. As an initial comment, the undersigned recognizes the Examiner appears to have acted according to current US PTO policy and he also recognizes that the Examiner does not have authority by himself to change US PTO policy.

The undersigned respectfully traverses election practice in general because election requirements are capricious, arbitrary and are sometimes contrary to law. On numerous occasions the undersigned attorney has asked three questions of US PTO Examiners regarding election requirements imposed in other applications. The questions are:

1. What criteria or rules are used to decide what is a species and to decide what species are presented for election?
2. What does it mean for a claim to read on a species? For example, does a claim read on a species if it has all features of a species (and possibly more features), or does it read on a species only if it has no features other than those in the species?
3. Apparently election requirements are imposed before any prior art is considered. How can an Examiner determine whether species are patentably distinct if no prior art is considered?

The undersigned attorney did not speak with Examiner Nasri; therefore, the Examiner did not have an opportunity to respond to these questions. In his experience, however, the undersigned has been unable to find any examiner in the US PTO that can answer the questions listed above.

Although restriction requirements are generally well understood and guided by clear rules and guidelines, election requirements are unpredictable, appear to be completely subjective, and they sometimes lead to situations that are not permitted by law. (The undersigned has encountered election requirements where, according to the examiner, some of the claims did not "read" on any of the listed species. As a result, the election requirement prevented the applicant from having certain claims examined.)

### CONCLUSION

Applicants elect the species of Group I and identify claims 1-4 as reading on the elected species.

Respectfully submitted,



David N. Lathrop  
Reg. No. 34,655  
601 California St., Suite 1111  
San Francisco, CA 94108-2805  
Telephone: (415) 989-8080  
Facsimile: (415) 989-0910

### Certificate of Transmission

I certify that this Response to Office Action and any following materials are being transmitted by facsimile on December 27, 2004 to the U.S. Patent and Trademark Office at telephone number (703) 872-9306.



David N. Lathrop